



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2012-0312]

RIN 1625-AA00

Special Local Regulation; Upper Mississippi River, Mile 842.0 to 840.0

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary special local regulation for all waters of the Upper Mississippi River, Mile 842.0 to 840.0, extending the entire width of the river. This special local regulation is needed to protect participants and event personnel during the swim leg of the Optum Health Twin Cities Triathlon occurring on the Upper Mississippi River. Entry into this area immediately before, during, and immediately after the swim portion of the triathlon will be prohibited unless specifically authorized by the Captain of the Port Upper Mississippi River or a designated representative.

DATES: This rule is effective and enforceable from 7:00 a.m. until 11:00 a.m. on July 22, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2012-0312 and are

available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2012-0312 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant Junior Grade (LTJG) Colin Fogarty, Sector Upper Mississippi River Response Department at telephone 314-269-2546, e-mail [Colin.M.Fogarty@uscg.mil](mailto:Colin.M.Fogarty@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

#### A. Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the

agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not using the NPRM process. The Coast Guard received notice from the sponsor, Optum Health Performance, on March 13, 2012 stating they will be holding a triathlon on the Upper Mississippi River on July 22, 2012. The triathlon is being advertised via press releases to various media outlets to target people on a local, state, and national level to ensure maximum outreach and preparation for the event. Completing the NPRM process is impracticable and contrary to the public interest as it would delay the necessary special local regulation, providing restricted areas and safety measures required to protect participants and event personnel from hazards associated with a swim event in the Mississippi River. Delaying this rule by completing the NPRM would also unnecessarily interfere with and delay the planned event and possible contractual obligations. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying this rule by providing 30 days notice would be contrary to public interest because action is needed to protect participants and event personnel during the swim leg of the Optum Health Twin Cities Triathlon.

## B. Background and Purpose

On July 22, 2012 Optum Health Performance will hold the Optum Health Performance Twin Cities Triathlon between mile 842.0 and 840.0 on the Upper Mississippi River. There are expected to be at least 700 athletes participating in the event. Anticipated traffic on the river, presents safety risks to the athletes swimming the swim section of the triathlon. Under 33 U.S.C. 1233 authority the Coast Guard is establishing this special local regulation to provide for the safety of participants, event personnel, spectators, and other users and vessels on the Upper Mississippi River during the swim section of the Optum Health Triathlon.

## C. Discussion of Rule

The Coast Guard is establishing a temporary special local regulation for all waters of the Upper Mississippi River, from mile 842.0 to 840.0, extending the entire width of the river. Entry into this zone is prohibited to all vessels and persons, except persons and vessels specifically authorized by the Captain of the Port Upper Mississippi River or designated representative. This rule is effective from 7:00 a.m. until 11:00 a.m. on July 22, 2012. The Captain of the Port Upper Mississippi River will inform the public of the enforcement period by local notice to mariners, and changes to the enforcement by broadcast notice to mariners.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). This rule is not expected to have a significant regulatory impact as it will be in effect for a limited time period and notifications to the marine community will be made by local notice to mariners, and subsequent notifications through broadcast notice to mariners. Deviation from the rule may be requested and will be considered on a case-by-case basis by the Captain of the Port or a designated representative.

##### 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 - 612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that

this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Upper Mississippi River, mile 842.0 to 840.0 from 7:00 a.m. until 11:00 a.m. on July 22, 2012. This temporary special local regulation will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for a limited time period and notifications to the marine community will be made by local notice to mariners, and subsequent notifications through broadcast notice to mariners. Deviation from the rule may be requested and will be considered on a case-by-case basis by the Captain of the Port or a designated representative.

If you are a small business entity and are significantly affected by this regulation, please contact LTJG Colin Fogarty, Sector Upper Mississippi River Response Department at telephone 314-269-2546, e-mail [Colin.M.Fogarty@uscg.mil](mailto:Colin.M.Fogarty@uscg.mil).

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate

protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and



does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves

establishing a special local regulation, requiring a permit wherein an analysis of the environmental impact of the regulations was performed. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction and an environmental analysis checklist and a categorical exclusion determination are not required for this rule. This rule is categorically excluded from further review under paragraph 34 (h) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR 100 as follows:

Part 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add § 100.35T08-0312 to read as follows:

§ 100.35T08-0312 Special Local Regulation; Upper Mississippi

River, Mile 842.0 to 840.0.

(a) Regulated area. The following area is a regulated area: a portion of the Upper Mississippi River, from mile 842.0 to 840.0, extending the entire width of the river near Saint Paul, MN.

(b) Enforcement dates. This rule will be enforced from 7:00 a.m. until 11:00 a.m. on July 22, 2012.

(c) Special Local Regulations. (1) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander with assistance from local authorities. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM".

(2) "Official patrol vessels" are defined as any Coast Guard, state or local law enforcement, and sponsor provided vessels assigned or approved by the Captain of the Port Upper Mississippi River to patrol the regulated area.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at a minimum safe navigation speed in a manner which will not endanger participants or any other vessels.

(4) No vessel shall transit through the regulated area, unless cleared for entry by or through an

official patrol vessel.

- (5) The patrol commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.
- (6) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.
- (7) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.
- (8) The Patrol Commander will terminate enforcement of the special local regulations at the conclusion of the event.

(d) Informational Broadcasts. The Captain of the Port or a designated representative will inform the public through broadcast notice to mariners of changes to the enforcement period for the regulated area.

Dated: June 8, 2012

B. L. Black,  
Captain, U.S. Coast Guard  
Captain of the Port Upper Mississippi River

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